

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 119
3 entitled “An act relating to a statewide use of deadly force policy for law
4 enforcement” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. 20 V.S.A. § 2368 is added to read:

9 § 2368. STANDARDS FOR LAW ENFORCEMENT USE OF FORCE

10 (a) Definitions. As used in this section:

11 (1) “Deadly force” means any use of force that creates a substantial risk
12 of causing death or serious bodily injury.

13 (2) “Imminent threat of death or serious bodily injury” means when,
14 based on the totality of the circumstances, a reasonable officer in the same
15 situation would believe that a person has the present ability, opportunity, and
16 apparent intent to immediately cause death or serious bodily injury to the law
17 enforcement officer or another person. An imminent harm is not merely a fear
18 of future harm, no matter how great the fear and no matter how great the
19 likelihood of the harm, but is one that, from appearances, must be instantly
20 confronted and addressed.

1 (3) “Law enforcement officer” shall have the same meaning as in
2 20 V.S.A. § 2351a.

3 (4) “Prohibited restraint” means the use of any maneuver on a person
4 that applies pressure to the neck, throat, windpipe, or carotid artery that may
5 prevent or hinder breathing, reduce intake of air, or impede the flow of blood
6 or oxygen to the brain.

7 (5) “Totality of the circumstances” means all facts known to the law
8 enforcement officer at the time, including the words and conduct of the subject
9 and the conduct and decisions of the officer leading up to the use of deadly
10 force. Consideration of the totality of the circumstances may include:

11 (A) the seriousness of the crime or suspected offense;

12 (B) the conduct of the subject being confronted as reasonably
13 perceived by the officer at the time, to include:

14 (i) signs of intoxication, impairment, or disordered thought related
15 to the use or consumption of alcohol or controlled substances; or

16 (ii) signs that the subject is suffering the effects of a mental
17 disease or defect, or has a physical disability that impairs the subject’s ability
18 to understand or comply with law enforcement commands;

19 (C) the time available to the officer to make a decision;

20 (D) the availability of other resources, including nonlethal means, to
21 gain compliance of a subject;

1 (E) factors such as the age, size, and relative strength of the officer
2 and the subject, the skill level and training of the officer, and whether the
3 officer or the subject is injured or exhausted; and

4 (F) the environmental factors and any exigent circumstances.

5 (b) Use of force.

6 (1) The authority to use physical force is a serious responsibility that
7 shall be exercised judiciously and with respect for human rights and dignity
8 and for the sanctity of every human life. Every person has a right to be free
9 from excessive use of force by officers acting under authority of the State.

10 (2) A law enforcement officer shall use only the force objectively
11 reasonable, necessary, and proportional to effect an arrest, to prevent escape, or
12 to overcome resistance of a person the officer has reasonable cause to believe
13 has committed a crime, while protecting the life and safety of all persons.

14 (3) The decision by a law enforcement officer to use force shall be
15 evaluated carefully and thoroughly, in a manner that reflects the gravity of that
16 authority and the serious consequences of the use of force by law enforcement
17 officers, in order to ensure that officers use force consistent with law and with
18 agency policies.

19 (4) Whether the decision by a law enforcement officer to use force was
20 objectively reasonable shall be evaluated from the perspective of a reasonable
21 officer in the same situation, based on the totality of the circumstances.

1 (5) Force is necessary if no reasonably effective alternative to the use of
2 force appears to exist and the amount of force used is reasonable to effect the
3 lawful purpose intended. Whether using force is necessary is based on the
4 totality of the circumstances at the time of the use of force.

5 (6) Force is proportional if the level of force applied reflects the totality
6 of the circumstances, including the nature and immediacy of any threats posed
7 to the law enforcement officer or others. Proportional force does not require
8 officers to use the same type or amount of force used by the subject. The more
9 immediate the threat and the more likely that the threat will result in death or
10 serious bodily injury, the greater the level of force that may be proportional,
11 objectively reasonable, and necessary to counter it.

12 (7) Prior to using force, a law enforcement officer shall, if feasible, take
13 proactive actions to stabilize the situation so that more time, options, and
14 resources are available to gain a person’s voluntary compliance and reduce or
15 eliminate the need to use force, including verbal persuasion, warnings, tactical
16 techniques, slowing down the pace of an incident, waiting out a subject,
17 creating distance between the officer and the threat, and requesting additional
18 resources to resolve the incident.

19 (c) Use of deadly force.

1 (1) A law enforcement officer is justified in using deadly force upon
2 another person only when, based on the totality of the circumstances, such
3 force is objectively reasonable and necessary to:

4 (A) defend against an imminent threat of death or serious bodily
5 injury to the officer or to another person; or

6 (B) apprehend a fleeing person for any felony that threatened or
7 resulted in death or serious bodily injury if the officer reasonably believes that
8 the person will cause death or serious bodily injury to another unless
9 immediately apprehended.

10 (2) The use of deadly force is necessary when, given the totality of the
11 circumstances, an objectively reasonable law enforcement officer in the same
12 situation would conclude that there was no reasonable alternative to the use of
13 deadly force that would prevent death or serious bodily injury to the officer or
14 to another person. When feasible, an officer shall employ all other reasonable
15 means before resorting to the use of deadly force.

16 (3) A law enforcement officer shall cease the use of deadly force as soon
17 as the subject surrenders or no longer poses an imminent danger of death or
18 serious bodily injury to the officer or to another person.

19 (4) When feasible, a law enforcement officer shall, prior to the use of
20 force, make reasonable efforts to identify himself or herself as a law
21 enforcement officer and to warn that deadly force may be used.

1 (5) A law enforcement officer shall not use deadly force against a
2 person based on the danger that person poses to himself or herself, if an
3 objectively reasonable officer would believe the person does not pose an
4 imminent threat of death or serious bodily injury to the law enforcement
5 officer or to another person.

6 (6) A law enforcement officer who makes or attempts to make an arrest
7 need not retreat or desist from his or her efforts by reason of the resistance or
8 threatened resistance of the person being arrested. A law enforcement officer
9 shall not be deemed an aggressor or lose the right to self-defense by the use of
10 proportional force if necessary in compliance with subdivision (b)(2) of this
11 section to effect the arrest or to prevent escape or to overcome resistance. For
12 the purposes of this subdivision, “retreat” does not mean tactical repositioning
13 or other de-escalation tactics.

14 (7) A law enforcement officer may use a prohibited restraint only in a
15 situation where use of deadly force is justified and only if no other intervention
16 is available to defend against an imminent threat of death or serious bodily
17 injury to the officer or to another person. A law enforcement officer is not
18 justified in continuing the use of a prohibited restraint when there is no longer
19 an objectively reasonable belief that the suspect continues to pose an
20 immediate threat of death or serious bodily injury to the officer or to another
21 person.

1 (8) A law enforcement officer has a duty to intervene when the officer
2 observes another officer using a prohibited restraint on a person.

3 Sec. 2. 13 V.S.A. § 1032 is added to read:

4 § 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT

5 (a) As used in this section:

6 (1) “Law enforcement officer” shall have the same meaning as in 20
7 V.S.A. § 2351a.

8 (2) “Prohibited restraint” means the use of any maneuver on a person
9 that applies pressure to the neck, throat, windpipe, or carotid artery that may
10 prevent or hinder breathing, reduce intake of air, or impede the flow of blood
11 or oxygen to the brain.

12 (3) “Serious bodily injury” shall have the same meaning as in section
13 1021 of this title.

14 (b) A law enforcement officer acting in the officer’s capacity as law
15 enforcement who employs a prohibited restraint on a person in a manner
16 inconsistent with § 2368(c)(7) that causes serious bodily injury to or death of
17 the person shall be imprisoned for not more than 20 years or fined not more
18 than \$50,000.00, or both.

1 Sec. 3. REPEALS

2 13 V.S.A. § 2305(3) (justifiable homicide) and 2020 Acts and Resolves No.
3 147, Sec. 6 (law enforcement use of prohibited restraint) are repealed.

4 Sec. 4. EFFECTIVE DATE

5 This act shall take effect on passage.

6 and that after passage the title of the bill be amended to read: “An act relating
7 to a statewide standard for law enforcement use of force”

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13 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE